

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**DOCKET NO. 2008-04**

**Re: Application of Granite Reliable Power, LLC for a Certificate of Site and  
Facility for the Granite Reliable Power Wind Park in Coos, County**

**ORDER ON PENDING MOTIONS**

**February 10, 2009**

**I. Procedural Background**

Granite Reliable Power, LLC, (Applicant) filed with the Site Evaluation Committee (Committee) an Application for a Certificate of Site and Facility for the Granite Reliable Power Wind Park, a renewable energy facility, proposed to be located in the Town of Dummer and the unincorporated places of Dixville, Erving's Location, Odell, and Millsfield, all of which are in Coos County. The Application proposes the construction and operation of thirty three (33) wind turbines each having a nameplate capacity of three (3) MW for a total nameplate capacity of ninety-nine (99) MW and associated transmission lines, substations and buildings. The Application also proposes the construction of approximately twelve (12) miles of new access roads and to upgrade approximately 19 miles of existing logging roads.

The Application was filed on July 15, 2008. The Chairperson of the Committee determined that the Application was complete and designated a Subcommittee to review the Application on August 14, 2008. A public informational hearing was held on October 2, 2008. The Subcommittee visited portions of the proposed site on October 3, 2008. Thereafter, certain parties were permitted to intervene in these proceedings. Since the public information hearing, the parties have been engaged in the discovery process including the exchange of data requests. Additionally, the parties have met in technical session on four occasions. Hearings are scheduled to begin on March 9, 2009. However, there are a number of pending motions, discussed below, that need to be addressed prior to hearing.

**II. Motion to Conduct Hearings in Coos County**

On October 13, 2008, Counsel for the Public filed a motion requesting that hearings in this proceeding be held exclusively in Coos County. In support of his motion, he notes that there is considerable public interest in the proposed project, that Concord is a significant distance from the project site, and that the cost of travel is a factor. The Applicant responded on October 23, 2008, noting its concerns about conducting the hearings in Coos County. Among other things, the Applicant cited logistical problems and additional expenses. The Applicant stated that it did not object to having at least one day of the hearings in Coos County. On November 2, 2008, Ms.

Linowes expressed her support for Public Counsel's motion. She contended that any logistical problems could be worked out and that any incremental costs that would be incurred by the Applicant were outweighed by permitting easier access to Coos County residents.

As required by RSA 162-H, the Subcommittee held an informational meeting in Groveton and, in addition, it conducted a site visit of the proposed project. Furthermore, several technical sessions among the parties have been held in Coos County. Conducting the adjudicative hearings in this proceeding in Coos County, however, presents serious professional challenges to the members of the Subcommittee and would be administratively inefficient.

Each of the members of the Subcommittee holds a full time position within state government that demands his or her close attention. Site Evaluation Committee duties are additional important duties that members must somehow balance with their primary job responsibilities. Given the four days of hearings in the Lempster proceeding, it is fair to conclude that this proceeding, which concerns 33 turbines as opposed to 12 turbines, in the case of Lempster, may involve more days of hearings. Under the best of circumstances, a proceeding such as this is complex and time consuming. Spending a week or more away from their offices in Concord, however, will interfere with the Subcommittee members' ability to effectively perform their primary job responsibilities. By conducting the hearings in Concord, the Subcommittee members have a greater opportunity before hearings, during recesses and after conclusion of hearings for the day to attend to their other duties. Furthermore, the Public Utilities Commission's hearing room and other facilities have proven particularly well-suited to conducting lengthy multi-party proceedings such as this one. At the same time, it is appropriate under the circumstances to provide an additional opportunity for Coos County residents to be heard on the application. Accordingly, the Subcommittee will conduct a day of hearings in Coos County for the purposes of hearing closing arguments from the parties to the proceeding and taking public comment.

### **III. Motion to Suspend Proceedings**

On February 5, 2009, Public Counsel filed a Motion to Suspend Deliberations and Proceedings. Public Counsel also filed a Motion for an Emergency Hearing on the Motion to Suspend Deliberations and Proceedings. The Applicant filed its objection to Public Counsel's motions on February 9, 2009.

Public Counsel contends that the Applicant does not have firm commitments for financing of the proposed project and does not have sufficient resources, itself, to pay for the construction and operation of the project. Public Counsel asserts that the information provided so far fails to establish that the Applicant has sufficient financial capability to assure construction and operation of the proposed facility. Public Counsel also asserts that the Applicant will not have financing in place before April 6, 2009.<sup>1</sup>

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<sup>1</sup> April 6, 2009, is the date on which the subcommittee must either grant or deny the applicant a Certificate of Site and Facility pursuant to RSA 162-H: 6-a.

Public Counsel therefore contends that the Applicant, to date, has failed to establish a *prima facie* case with respect to financial capability. Public Counsel also requests the Subcommittee hold an emergency hearing and suspend its proceedings pending a *prima facie* showing by the Applicant in order to avoid a full hearing on the merits of the Application. Public Counsel asserts that a full hearing would be a waste of time in the absence of a *prima facie* showing of financial capability by the Applicant.

The Applicant contends that it has filed the information required of it and that the procedural schedule permits it to file additional testimony, which is due on February 23, 2009. Consequently, it asserts that Public Counsel's motion is premature because the procedural schedule contemplates further testimony and because deliberations have not begun. The Applicant further argues that Public Counsel's argument is based on a misunderstanding of the nature of project financing.

RSA 162-H: 7, V (e), requires that each Application filed with the Committee describe, "in reasonable detail the Applicant's financial, technical, and managerial capability for construction and operation of the proposed facility." Committee rules require that an Applicant file a statement of assets and liabilities. See, NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 301.04 (b)(7) and Site 301.04(h)(6). Once an Application for a Certificate of Site and Facility for a renewable energy facility has been filed, the Chairperson of the Committee or his designee must expeditiously conduct a preliminary review to assess whether the Application contains sufficient information to carry out the purposes of RSA 162-H. See, RSA 162-H: 6-a, II; NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 301.05 (b). If the Chairperson accepts the Application he must then designate a Subcommittee as provided in RSA 162-H: 4, V. The Subcommittee ultimately determines whether a Certificate of Site and Facility should be granted for a renewable energy project. In determining whether to grant or deny a Certificate of Site and Facility for a renewable energy project, the Subcommittee must consider whether the Applicant has "adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate." RSA 162-H: 16, IV, (a).

In this case, the Application was filed on July 15, 2008. Appendix I to the Application contained financial statements of the Applicant.<sup>2</sup> The Committee Chairperson conducted a preliminary review and issued an order dated August 14, 2008, finding that the Application contained sufficient information to carry out the purposes of RSA 162-H. The Chairperson of the Committee thus found that the Application contained sufficient information for the Subcommittee to proceed with its review of the financial capability of the Applicant pursuant to RSA 162-H: 16, IV, (a).

Neither the statute nor the administrative rules require a particular quantum of financial capability evidence that must be presented to warrant the issuance of a

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<sup>2</sup> On November 4, 2008, Appendix I was determined to be commercially sensitive information that is sealed as part of the Committee's records and subject to a confidentiality agreement between the Applicant and those parties who agree to be bound to confidentiality. Public Counsel was provided a copy of Appendix I to the Application.

Certificate of Site and Facility. However, the administrative rule does provide that the Applicant must file, at a minimum, a statement of assets and liabilities. In this case, the Applicant has done so. The quality and weight of the Applicant's financial capability evidence will be considered by the Subcommittee as part of the adjudicative proceedings in determining whether or not to grant or deny a Certificate of Site and Facility. Public Counsel's motion seeks to suspend those proceedings before they have begun based upon Public Counsel's perception of the quality and weight of the Applicant's evidence. To do so would improperly deprive the Applicant of its right to a full adjudicative proceeding before the Subcommittee. Therefore, Public Counsel's Motion to Suspend Deliberations and Proceedings and Public Counsel's Motion for an Emergency Hearing are both denied.

While Public Counsel's proposal is inconsistent with acceptance of the Application pursuant to RSA 162-H:6-a, he nevertheless raises an important issue concerning the examination of financial capability. It is fair to say that extraordinary events have occurred in financial markets and the economy overall since the Applicant made its filing in July, 2008. It is also clear from the procedural schedule that the time between the filing of supplemental testimony on February 23, 2009 and the beginning of hearings on March 9, 2009 is relatively short if substantially lengthy or complex new financial testimony is filed.

The hearings will begin on March 9, 2009 as planned but, in the event that the Applicant submits substantial supplemental testimony on financial capability, the Subcommittee will entertain a motion to allow a reasonable period of time for parties to prepare for cross examination on such testimony. In the meantime, the parties are encouraged to reach agreement on the order of witnesses, the order of cross examination and, if possible, the handling of any supplemental financial testimony. To the extent the hearings close later in March than may have previously been anticipated, the more difficult it will be for the Subcommittee to issue a decision by April 6, 2009. Nevertheless, it is critical that the Subcommittee have an adequate record on which to base a decision and that requirements of due process be met.

#### **IV. Motion for Confidential Treatment**

On January 5, 2009, the Applicant filed a Motion for Confidential Treatment of the response to a data request identified as TS 3-20. TS 3-20 reads:

TS 3-20: A footnote in the S-1 filing for Noble indicates that 75MW of the output of this project will be available to Noble. Please explain who is entitled to receive the other 25% of the output from this project [requested by Public Counsel].

The Applicant considers the answer to this data request to consist of financial or commercial information which is exempted from public inspection pursuant to RSA 91-A:5. The Applicant does not seek complete confidential protection for the data, but asks that the data be treated confidentially within the terms of the Order of November 4,

2008. Under the previous Order, the parties to the proceedings can review the response to the data request upon signing a non-disclosure agreement.

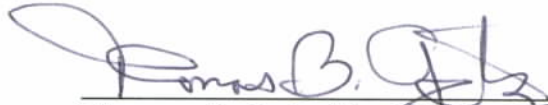
Records pertaining to confidential, commercial or financial information are exempt from public disclosure pursuant to RSA 91-A:5, IV. The information requested in the data requests appears to fall within the definition of commercial or financial information as that term is interpreted in *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540, 553 (1997). Such records are not exempt from public disclosure on a *per se* basis. The agency must perform a balancing test to determine whether the records should be protected or if the public's interest in disclosure is outweighed by the Applicant's interests in protecting confidential information. In this case, the data requested, if made publicly available, could affect the Applicant's competitive position in the renewable energy market. The information sought involves a major purchaser of the electricity that is proposed to be generated by the facility. Identifying the prospective purchaser of such a large quantity of energy to the Applicant's competitors could affect the Applicant's competitive position by opening the proposed purchaser to entreaties from competing energy providers. Likewise, the Applicant's effort in identifying and soliciting an appropriate purchaser for this unique commodity has a certain value that could be undermined by disclosure at a time before the facility is operational.

Because the public interest in the disclosure of the requested information is outweighed by the likelihood of substantial harm to the competitive position of the Applicant, the request for confidential treatment of the answer to the data request is hereby granted. See, *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540, 553-554 (1997). The answer to the data request shall remain confidential, subject to the terms and conditions set forth in the Subcommittee's Order of November 4, 2008.

## **V. Motion to Enlarge Time to Answer Data Requests**

Also pending is a motion filed by the New Hampshire Fish & Game Department (NHF&G) on January 29, 2009, requesting that the time to provide responses to the Applicant's data requests be extended by a period of 10 days. On January 9, 2009, the Applicant propounded data requests in response to pre-filed testimony submitted by the NHF&G on December 19, 2008. SEC counsel reports that NHF&G answered all but a handful of the Applicant's data requests by the deadline of January 29, 2009 and that NHF&G provided the missing responses on February 2, 2009. Additionally, SEC counsel reports that, on February 3, 2009, the Applicant and NHF&G and its experts attended a technical session at which the Applicant and other parties were permitted to question the NHF&G witnesses. Inasmuch as it appears that NHF&G has provided its responses to the Applicant, and the Applicant has had the opportunity to question the NHF&G witnesses, the motion to enlarge the time to file responses to data requests is moot.

So ordered, this 10th day of February, 2009.

A handwritten signature in blue ink, appearing to read "Thomas B. Getz", is written over a horizontal line.

Thomas B. Getz, Vice Chairperson  
New Hampshire Site Evaluation Committee  
Presiding Officer